

## MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

August 1, 2003

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held by video conference on August 1, 2003. Attendance was as follows:

### MEMEBERS PRESENT:

Curt C. Barwick  
Keith Paul Bishop  
John C. Carpenter  
Nelson D. Crandall  
Bruce Dravis  
James K. Dyer, Jr.  
Teri Shugart Erickson  
James F. Fotenos  
Steven K. Hazen  
Mark T. Hiraide  
Victor Hsu  
Keith B. Martin  
Brian D. McAllister  
David M. Pike  
James R. Walther  
Neil J Wertlieb  
Nancy Wojtas

### MEMBERS ABSENT:

Timothy J. Fitzpatrick  
John H. Marlow  
Stewart Laughlin McDowell  
Ethna M. S. Piazza  
Cynthia Ribas  
Randall Brent Schai  
Daniel J. Weiser  
Brian Wong

### LIAISONS AND GUESTS PRESENT:

Gail Oshima, Department of Corporations

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda, which are not described in these minutes.

### I. ADMINISTRATIVE MATTERS.

A. Opening Remarks and Announcements. The meeting was called to order by Co-Chair Bruce Dravis at approximately 9:00 a.m. Mr. Dravis provided opening remarks and announcements.

B. Minutes of July 11, 2003 Meeting. The minutes of the July 11, 2003 meeting previously circulated to the members were approved by the Committee with minor clerical revisions.

## II. LIAISONS' REPORTS AND DISCUSSION.

A. Department of Corporations. Gail Oshima reported on recent events at the California Department of Corporations ("Department"). Ms. Oshima discussed the status of electronic filing of 25102(f) notices. The Department plans to test the internet filings with two law firms beginning as early as next week. Ms. Oshima reported that the Department's consumer credit counseling report is available on its website. Ms. Oshima also reported that the Department has expressed its support for the Committee's proposed legislation AB 169 (Chavez) and SB 220 (Romero). Ms. Oshima also provided a brief overview of AB 1031 (Correa). Ms. Oshima reported that Commissioner Boutris would be speaking at the upcoming Annual Bar Convention in Anaheim and that Deputy Commissioner Le Bas would be speaking at the upcoming ABA Franchise Forum in Florida. Co-Chair Bishop commented that the Department had recently published its annual finance lenders report and provided certain highlights noting, among other things, that the number of licensees had increased over the prior year.

B. Secretary of State. Co-Chair Dravis reported that the Office of the Secretary of State of California had considered discontinuing its procedure that permitted filers to secure the original filing date for filings that were denied by the Secretary of State and resubmitted by the filer within 72 hours of the denial. Members of the Committee shared experiences concerning the denial of filings in the past and discussed the importance of clarification of the rules, policies and procedures followed by the Secretary of State in this regard. An extensive discussion followed, including the possibility of forming a task force to work with the Secretary of State to clarify its rules, policies and practices in an effort to enhance uniformity and consistency. Mr. Dravis also reported on the status of the Secretary of State's legislative proposal to amend AB 55.

C. Legislation. Co-Chair Dravis reported that AB 169 (Chavez), the Committee's legislative proposal concerning the application of the finance lenders law to venture capital companies, passed the Assembly and the Senate and has been submitted to the Governor for signature. Mr. Dravis also reported that SB 220 (Romero), the Committee's fax filings bill, has passed the Senate and the Assembly, that amendments to the bill have been recently approved by the Assembly, and that the amended bill is in the Senate with no controversy expected. In addition, Mr. Dravis reminded the Committee that October 9, 2003 is the deadline for the adoption of bills by the Governor.

Regrettably, it was reported that Terry Miller's employment with the State Bar of California is scheduled to expire in December of this year. The members of the Committee expressed their appreciation for the hard work, resourcefulness and creativity that Mr. Miller has provided the Committee, and all agreed that Mr. Miller has been a tremendous resource to the Committee. Several examples of Mr. Miller's effectiveness were discussed. In support of Mr. Miller, the Committee authorized Co-Chairs Bishop

and Dravis to take any and all actions deemed necessary or appropriate to urge the State Bar of California to retain the services of Mr. Miller.

D. Partnerships and LLC Committee and FASB Reporter. Steve Hazen reported that the Partnerships and LLC Committee has not met since the last meeting of the Committee. Mr. Hazen also reported that FASB has finalized its staff positions concerning FASB Interpretation Number 46, *Consolidation of Variable Interest Entities*, and the final FASB Staff Positions are posted to the FASB website [www.FASB.org](http://www.FASB.org). The Committee discussed various issues relating to generally accepted accounting principles (“GAAP”) and Mr. Hazen was requested to circulate a recent filing with the SEC in which the issuer disclosed that its financial statements prepared in accordance with GAAP may overstate the financial condition of the issuer. The concept of principle-based, rather than rule-based, accounting was discussed. Mr. Hazen also reported that the stock option accounting project of FASB is ongoing.

E. Corporate Law Committee. Curt Barwick provided an overview of the recent activities of the Corporate Law Committee. The Corporate Law Committee has presented a strategic planning report to the Executive Committee. In addition, Mr. Barwick reported that the Corporate Law Committee would like to have greater interface with the Committee. After discussion, the Committee requested Mr. Barwick to extend an invitation to the Corporate Law Committee to attend one of the Committee’s meetings.

F. UCC Committee. Jim Fotenos reported that the UCC Committee met on July 30<sup>th</sup> and that the UCC Committee has been very productive this term. The UCC Committee has been actively involved in the Secretary of State’s Automation Project. In addition, the UCC Committee has formed a subcommittee to evaluate Article 7 (Documents of Title). Mr. Fotenos also reported that 41 states have repealed Article 6 (Bulk Sales). In addition, Mr. Fotenos reported that the UCC has completed a draft of its legal opinion report and the draft is currently under review.

G. Opinions Committee. Nelson Crandall reported that the next meeting of the Opinions Committee will be in Anaheim during the Annual Bar Convention next month. The Steering Committee met on July 18<sup>th</sup> and interim drafts of certain portions of the report are currently being circulated for review.

### III. OPINION PROJECT

Nelson Crandall reported that he has not had any communications with Brian Wong regarding the project. Co-Chair Dravis will contact Brian Wong for an update on the subcommittee’s progress.

### IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS

Brian McAllister provided an update on the status of the Committee’s legislative proposal relating to electronic communications. Mr. McAllister explained the two primary modifications that were made to the proposed legislation and reported that the revised legislative proposal is currently being considered by the Executive Committee.

Steve Hazen made a few comments pertaining to the legislative proposal and will follow-up with Mr. McAllister after the meeting. Mr. McAllister mentioned that the Committee may have opportunities to revise the legislative proposal throughout the process. The Committee members complimented Brian McAllister and Randall Schai on the final product and expressed the Committee's gratitude for the extensive work performed by them on this project.

#### V. WEBSITE PROJECTS

Brian McAllister reported that the State Bar of California is migrating its website to the State of California website and that, consequently, no updates to the Committee website are expected until later in August.

#### VI. OTHER PROJECTS

A. Educational Activities. David Pike reported that Brian McAllister, Randall Schai and Jim Walther will present a program concerning recent business law developments of interest to California corporate lawyers at the Annual Meeting of the State Bar of California in September.

B. New Members. Co-Chair Dravis provided a brief report on the status of the new members of the Committee.

C. Corporate Governance Curriculum Project. Co-Chair Dravis provided a status report on the corporate governance curriculum project. Preliminary responses indicate that universities have not significantly changed their curriculum or imposed mandatory classes in response to the highly-publicized recent events concerning corporate governance and related state and federal legislation. If a sufficient number of responses are received during August, Mr. Dravis estimated that the report may be completed in September.

#### VII. NEW BUSINESS/INFORMATIONAL.

Co-Chair Bishop provided an overview of the Washington State Bar Association's Proposed Interim Formal Ethics Opinion Regarding the Effect of the SEC's Sarbanes-Oxley Regulations on Washington Attorneys' Obligations Under the Rules of Professional Conduct and the related SEC response letter from Giovanni Prezioso, General Counsel of the SEC, which were both distributed to the Committee members prior to the meeting. An extensive discussion followed. The members of the Committee expressed their support for a letter to be drafted that contains the points raised by Keith Bishop, subject to review and approval by the Executive Committee.

The meeting was adjourned at approximately 11:30 a.m.

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James K. Dyer, Jr., Secretary